

1 A. That's correct.

2 Q. How long have you been a stockholder?

3 A. Since 1984.

4 Q. What title do you use in your business,
5 your own title?

6 A. First thing that flashes through my
7 mind is anything that's convenient for that
8 particular situation, which it varies; but,
9 normally, vice-president.

10 Q. And how long have you used that title?

11 A. Since 1984.

12 Q. Do you report to anyone in a corporate
13 reporting sense?

14 A. In a corporate reporting sense? I
15 would say to the other -- Well, no, not really. We
16 have a company meeting, obviously. The president
17 presides.

18 Q. When you are on the premises at the
19 company offices of the plant, are you always the
20 senior person there?

21 A. Yes, sir.

22 Q. Do your responsibilities with the
23 company include negotiating lease agreements
24 involving the use of the company facilities?

25 A. Yes, sir.

1 Q. Has that been true from at least
2 January, 1989 through the present?

3 A. Yes, sir.

4 Q. What responsibility, if any, does the
5 board of directors of the company have for
6 reviewing any lease agreements involving company
7 facilities?

8 A. None, never reviewed any.

9 Q. In your -- Strike that. Would it be
10 accurate to say that you are the senior manager of
11 the company?

12 A. Yes, sir.

13 Q. In your capacity as senior manager of
14 the company, would you ordinarily be aware of all
15 lease negotiations involving company property?

16 A. Yes, sir.

17 Q. Has that been through at least since
18 January, 1989 to the present?

19 A. Yes, sir.

20 Q. As senior manager of the company, would
21 you ordinarily be aware of all discussions between
22 the company and others concerning leasing involving
23 company property --

24 A. Yes, sir.

25 Q. Let me finish the question.

1 A. Oh, I'm sorry.

2 Q. It's very tempting, and I have been a
3 witness, myself, to anticipate the question and
4 answer it before it's finished, but the record is
5 hard to keep clear if we do that.

6 Has that been also true at least from
7 January, 1989 to the present?

8 A. Yes, sir.

9 Q. I take it from your earlier testimony
10 that you are, as of this time, familiar with the
11 name, David Gardner?

12 A. Yes, sir, I am now.

13 Q. Do you know approximately when the
14 first time you heard that name was?

15 A. Oh, no. I really can't say. I don't
16 recall when the first time was.

17 Q. Have you or, to your knowledge, any
18 other representative of Ready Mixed ever entered
19 into lease negotiations with anyone concerning the
20 use of your Erick Road office rooftop as a low-
21 power television antenna site?

22 A. No, sir.

23 Q. Have you or, to your knowledge, any
24 other representative of your company ever had any
25 discussions with anyone concerning your company's

1 willingness to negotiate an agreement with anyone
2 regarding the use of your Erick Road building as a
3 low-power television antenna site?

4 A. Yes, I have.

5 Q. Would you describe those?

6 A. I had a discussion with a Mr. Daly
7 that, and I stated so in a letter, that we would be
8 willing, and I was able to negotiate, possible
9 negotiation of a lease for the top of the roof for
.10 an antenna.

11 Q. Apart from that discussion with Mr.
12 Daly, have you or anyone else representing your
13 company ever had any discussion with anyone about
14 your company's willingness to enter into a lease
15 negotiation for a television antenna?

16 A. I would answer that: No. Because the
17 other meeting that was held, we never really got to
18 any of that discussion.

19 Q. And by that you're referring to the
20 meeting of October 16, 1991?

21 A. Of the gentlemen whose names I cannot
22 remember; yes, sir.

23 Q. In the time frame of October, 1991, and
24 I think the record establishes that the meeting you
25 had with the two gentlemen was on October 16, 1991;

1 in that general time frame did you ever inform
2 anybody that your company was still willing to
3 negotiate an agreement to make the roof of your
4 building available as a low-power television
5 antenna site?

6 A. No, sir.

7 Q. At any time did you or anyone else
8 representing your company ever generally discuss
9 possible lease terms with anyone concerning lease
10 of your site as a low-power television antenna
11 site?

12 A. No, sir. The only time that any terms
13 were discussed was when Mr. Daly requested I draw
14 up my own letter and put a figure in as for a
15 monthly lease rate, just for his benefit.

16 Q. At any time did you or any other person
17 representing your company ever engage in
18 preliminary lease negotiations with anyone about
19 the use of your site as a low-power television
20 antenna site?

21 A. No, sir.

22 Q. Apart from your discussion with Mr.
23 Daly in 1989, did you or any other representative
24 of your company ever generally discuss with anyone
25 the terms under which your building might be made

1 available for use as a low-power television antenna
2 site?

3 A. No, sir.

4 Q. Referring to the visit that you
5 received on October 16, 1991, to which you have
6 given considerable testimony already, did you
7 discuss that visit with anyone in your company
8 afterwards?

9 A. No, sir.

10 Q. The record reflects that one of the
11 gentlemen who was sitting in this room at the
12 beginning of your deposition, but is not here any
13 longer, was David Gardner. Did you see that person
14 in the room?

15 A. Yes, sir.

16 Q. Are you able to say whether that
17 person -- Strike that. Do you recognize David
18 Gardner as being one of the persons who visited you
19 at your office on October 16, 1991?

20 A. No, sir.

21 Q. Are you able to say with reasonable
22 certainty that he --

23 MR. COHEN: Could I hear that question
24 read back and the answer, please.

25 (Whereupon, the Court Reporter read

1 back the last question and answer.)

2 BY MR. EMMONS:

3 Q. Are you able to say with reasonable
4 certainty that David Gardner was not one of the
5 persons that came to visit you on October 16, 1991?

6 A. I do not believe David Gardner came to
7 visit me.

8 Q. To your knowledge, on having seen David
9 Gardner in this room here, today, to the best of
10 your knowledge and recollection, is that the first
11 time you have ever seen David Gardner?

12 A. Yes, sir.

13 Q. What is the telephone number at your
14 plant office?

15 A. The first incoming line is 394-7109.

16 Q. All right, is there a second line that
17 comes in?

18 A. No, there are four lines.

19 Q. I see. Let me ask you this question.
20 Is one of the numbers 394-0637?

21 A. Yes, sir.

22 Q. Was that one of the numbers in October,
23 1991?

24 A. Yes, sir.

25 Q. And is the area code for that number

1 seven one seven?

2 A. Yes, sir.

3 Q. Now, if one were to call that number
4 and ask for the manager, what would happen? Who
5 would initially receive that call, and what would
6 happen from that point?

7 A. Ninety-five percent of the time the
8 office secretary would receive that call.

9 However, if she is busy, someone else
10 would answer it.

11 If they would ask for the manager, at
12 that level it's me. They will get me.

13 Q. And what time does your office open for
14 business in the morning?

15 A. 6:00 o'clock in the morning.

16 Q. What time do you normally get to the
17 office?

18 A. 6:00 o'clock.

19 Q. What time did you normally leave?

20 A. 5:00. I should change that other
21 question about the number of hours worked. It's
22 eleven hours.

23 Q. Are the secretaries in your office
24 instructed to ask callers to identify themselves if
25 the caller asks to speak to the manager?

1 A. Yes.

2 Q. Are the secretaries instructed to
3 ascertain from a caller what that person's business
4 is or what they are calling about?

5 A. Yes, they are instructed to.

6 Q. Is that practice routinely followed?

7 A. Not to my liking. I have talked to a
8 lot of stockbrokers that I didn't want to talk to.

9 Q. You have that problem, too?

10 A. Yes.

11 Q. Mr. Rick, if you have a thought on
12 this, or if you don't, please say so.

13 Typically, how long would it take in
14 terms of duration from the time that the telephone
15 in your office were picked up to the time a call
16 were referred to you if the caller called and said
17 they wanted to speak to the manager?

18 A. Well, that could very definitely vary,
19 depending upon what I was doing.

20 If a particular time I was dispatching
21 or something like that, it could be four or five or
22 six minutes before I could get to them, depending
23 on what was going on.

24 Q. If you were at your desk at the time
25 and readily available, how long would that take?

1 A. No longer than a minute.

2 Q. You have given quite a bit of
3 testimony -- Not quite a bit, some testimony about
4 the visit by Mr. Daly in 1989. I want to just
5 review that with you, if I may.

6 A. Certainly.

7 Q. Do you recall approximately what date
8 that visit occurred?

9 A. No. I don't have a date. If I don't
10 have a date down there, I don't recall.

11 Q. Let me ask you to turn to Rick
12 deposition exhibit two, which is the affidavit of
13 Edward Rick, III.

14 A. All right.

15 Q. Do you see Appendix C of that
16 declaration? There is a letter dated February 14,
17 1989?

18 A. Uh-huh.

19 Q. And is that your signature that appears
20 on it?

21 A. Yes, it is.

22 Q. Does that refresh your recollection as
23 to when Mr. Daly's visit occurred?

24 A. Yes, sir.

25 Q. Would you relate, as best you can

1 remember, what happened when that visit occurred,
2 starting at the beginning? Mr. Daly arrived?

3 A. Mr. Daly arrived, came in, introduced
4 himself, gave me his card. Told me that he was
5 looking around the area for possible locations for
6 antennas.

7 He may have said low-powered television
8 antennas for stations. I'm not sure. And that
9 since our structure stuck, I believe, ninety feet
10 in the air it was a possible site for an antenna.

11 We just discussed back and forth a few
12 things. I had two concerns. The one was the size
13 of the antenna.

14 Mr. Daly informed me that he wasn't
15 sure exactly what the size would be, but it would
16 be something similar to what we had up there.

17 Apparently, Mr. Daly had looked up
18 there from the ground.

19 We have a high frequency FM antenna up
20 there, which is approximately fifteen feet high,
21 about three inches in diameter.

22 I also questioned Mr. Daly on whether
23 this television antenna would cause interference
24 with our FM radio traffic.

25 And I don't recall exactly what he

1 said, but that was one of my main concerns as to
2 whether there would be interference and as to the
3 size of the antenna.

4 Q. Did you --

5 A. I'm sorry. He then wanted me to sign a
6 standard form, which I really didn't want to sign
7 and didn't sign.

8 So he requested that I write something
9 that I would be willing to negotiate, which I was.
10 I was willing to negotiate, which I wrote.

11 Q. And is that the letter that's dated
12 February 14, 1989?

13 A. Yes, sir.

14 Q. Was anyone else present in your
15 discussions with Mr. Daly?

16 A. No, sir.

17 Q. Approximately how long did that visit
18 last?

19 A. I would say the discussion I had with
20 him was approximately fifteen to twenty minutes.
21 He then requested to go up inside the
22 superstructure.

23 And I sent him up there along -- He
24 wanted to go up by himself, but I would not permit
25 that for safety purposes and required someone to

1 take him up through it.

2 Which he did, and then came back down
3 and left.

4 Q. He was accompanied by one of your
5 workers?

6 A. He was accompanied by one of my
7 employees. Yes, sir.

8 Q. Did Mr. Daly explain to you that a
9 pedestal would have to be built on the top of the
10 building roof?

11 A. No, sir.

12 Q. Did he make any reference to a pedestal
13 as being needed to supported the antenna?

14 A. No, sir.

15 His discussion was it was something
16 similar to what was there, so what was there was
17 just something that was anchored onto an existing
18 guardrail, which didn't require anything.

19 Q. There was no pedestal on the roof at
20 that time?

21 A. (Indicates no.)

22 Q. Is the answer: No?

23 A. No, sir.

24 Q. Based on your discussion with Mr. Daly,
25 again, what was your understanding as to what would

1 be the approximate size of the antenna that he was
2 talking about?

3 A. His -- This is almost the exact words:
4 Something similar to what is there now. Which was
5 this fifteen-foot FM high frequency antenna, about
6 three inches in diameter.

7 Q. Did you take notes of your discussions
8 with Mr. Daly?

9 A. No, sir.

10 Q. Did you prepare any memorandum of the
11 discussion afterwards?

12 A. No, sir. I just -- I started a file:
13 TV tower; stuck a copy of the letter that I had
14 prepared for him and his card in it and filed it.

15 MR. EMMONS: I have a document I'm
16 going to ask the reporter to mark as Rick
17 deposition exhibit number seven.

18 (Whereupon, the Court Reporter marked
19 for identification as Deposition Exhibit Rick
20 seven, a document.)

21 BY MR. EMMONS:

22 Q. Let the record reflect that I have just
23 handed the witness and each counsel a copy of
24 what's been marked as deposition exhibit number
25 seven.

1 And, for the record, let me describe
2 what it is. It is a copy of an application filed
3 with the Federal Communications Commission by
4 Raystay Company, filed on March 9, 1989.

5 And it consists of twenty-five pages
6 which are numbered sequentially in the lower
7 right-hand corner with a numbering system that, the
8 record should be clear, was placed on by our
9 office.

10 Those numbers did not appear on the
11 original as filed.

12 Do you have that document in front of
13 you, Mr. Rick?

14 A. Yes, sir, I do.

15 Q. I ask you to turn to page twenty-two of
16 the document, which is the third to last page --
17 Fourth to last page, I'm sorry.

18 This is an antenna sketch that was
19 included as part of the application. And my
20 question to you, Mr. Rick, is, first, have you seen
21 this sketch before?

22 A. Yes, sir, I have.

23 Q. When was the first time that you saw
24 the sketch?

25 A. Oh --

1 Q. Approximately.

2 A. I don't know. Mr. Holt faxed it to me
3 at some point in time.

4 Q. Now, prior to your receipt of that from
5 Mr. Holt, were you ever provided by anyone a
6 precise drawing of the low-power television antenna
7 structure that was being proposed on your roof?

8 A. No, sir.

9 Q. Now, let me ask you, if you would, to
10 think back to the period of time immediately after
11 you were advised by Mr. Daly in February, 1989 and
12 had your meeting with him.

13 At any time after that visit were you
14 ever provided with a written copy of the sketch
15 that you now see before you?

16 A. No, sir.

17 Q. At any time after Mr. Daly's visit were
18 you ever provided with an oral description of the
19 structure that is described in the sketch that you
20 have before you?

21 A. No, sir.

22 Q. At any time after that visit were you
23 ever provided with any information about the
24 prospective size or weight of the structure that is
25 depicted in the antenna sketch you see before you?

1 A. No, sir.

2 Q. What was your reaction, if any, when
3 you first reviewed a copy of the sketch that you
4 now have before you?

5 A. Shock.

6 Q. Is the structure that is shown in the
7 sketch different from what you had in mind at the
8 time you met with Mr. Daly?

9 A. Yes, sir.

10 Q. Would you describe for us the portion
11 of the roof on which the antenna that is depicted
12 in this sketch was supposed to be located, as you
13 understood it?

14 A. According to the sketch now?

15 Q. Yes. Yes, according to the sketch.

16 A. According to the sketch, the part of
17 the roof that this antenna is to be placed upon is
18 a structure that is made of two-by-fours and steel
19 sheeting which is there only to protect from the
20 weather the bins and conveyer motors, gear
21 reducers, and gears.

22 This building or part of the building
23 would not support anything.

24 Q. You're referring to the steel sheeting?

25 A. The steel sheeting is strictly siding.

1 It's steel siding. That is all it is. This
2 building is not structurally sound to support
3 anything.

4 Q. Okay. If you had been provided a copy
5 of this sketch at the time of your meeting with Mr.
6 Daly, what concerns, if any, would you have had
7 about the size of the structure?

8 A. Well, if I would have been presented
9 this picture at the first meeting, it would have
10 been the last meeting that we would have had
11 because one very important reason -- It doesn't
12 have anything to do with the strength of the
13 structure, or the weight of the antenna, or
14 anything else.

15 But the only way that we have to change
16 our motor on our conveyer or change our gears or
17 gear boxes is by getting a huge crane, taking the
18 roof off of that existing portion of the building,
19 and changing the motor or gear box, whatever has to
20 be done.

21 By placing an antenna up there, we
22 could not do that, and I would never place myself
23 in that position.

24 If I had seen this picture from day-
25 one, it would have been the end of the

1 conversation.

2 Q. In light of what you have just
3 testified, would you have signed the letter of
4 February 14, 1989 if you had understood then what
5 you now understand about the diagram?

6 A. Absolutely not, sir.

7 Q. Mr. Cohen at one point asked you
8 whether certain words that appear in your affidavit
9 that was filed with the Federal Communications
10 Commission could have been Mr. Holt's words, and,
11 if I recall, your response you said that they could
12 have been.

13 And my question to you is if Mr. Holt
14 had drafted anything for your affidavit that you
15 did not consider to be completely accurate, would
16 you have told him that?

17 A. Yes, sir.

18 Q. Would you have signed your affidavit if
19 you thought that any of the words used or any of
20 the phrases used in the affidavit were not
21 completely accurate?

22 A. No, sir.

23 Q. Was there at the time you signed your
24 affidavit anything in it that you did not consider
25 completely accurate?

1 A. No, sir.

2 MR. EMMONS: That's all I have.

3 EXAMINATION

4 BY MR. SHOOK:

5 Q. I have a new questions. With respect
6 to the FM antenna that you have described, it is
7 presently on top of the plant building?

8 A. It is on top of the plant. Yes, sir.
9 It is not on top of the section that they have
10 depicted putting the -- their antenna, transmitter.

11 Q. And you described it as being fifteen
12 feet. Is that fifteen feet a pole of some kind?

13 A. It is basically a pole. Yes, sir.
14 Probably at the base it's about three inches in
15 diameter and probably tapers off to maybe two
16 inches and is approximately fifteen feet long.

17 It is held on a metal -- The metal
18 railing around the cement bins, and it is just
19 bracketed on there, and that's what Mr. Daly told
20 me it would be similar to.

21 Q. And what is the nature of the roof
22 where the pole rests?

23 Is it the same as what you described in
24 terms of your understanding of the drawing that
25 appears on deposition exhibit seven, page

1 twenty-two?

2 A. I'm not sure I follow you, sir.

3 Q. Okay. You had described the portion of

4 the roof that appears in the picture that we have

5 been referring to?

6 A. Right.

7 Q. As steel and plywood, I think you said?

8 A. It's two-by-fours and steel sheeting,

9 siding similar to what goes on a house.

10 Q. Now, does the FM antenna --

11 A. I can write on this, right? Is there a

12 problem with drawing?

13 Q. No, you can draw a picture and, I

14 guess, verbally give a description of what it is

15 you're drawing.

16 A. There is a railing right here that goes

17 the whole way around the section of the roof.

18 The FM antenna is attached to this. It

19 probably goes up to about there.

20 Q. So the FM antenna basically is at a

21 corner of the building?

22 A. Yes, sir.

23 Q. And it rests on whatever is in that

24 corner?

25 A. It doesn't rest on anything. It is

1 clamped on a railing, safety railing that goes
2 around this area. This area is open. This is the
3 top of the cement bins, so there are the toe boards
4 that's required by OSHA and the railing that is
5 required by OSHA.

6 And this is clamped to the railing.
7 And it then has a cable that runs down into our
8 main office.

9 Q. All right. And you described that as
10 an FM antenna?

11 A. It's an FM high-frequency antenna for
12 truck radios.

13 Q. Truck radios, okay.

14 A. Yes.

15 Q. So the transmitting equipment is inside
16 your office?

17 A. Yes, sir.

18 MR. SHOOK: I have no further
19 questions.

20 MR. COHEN: Okay.

21 MR. EMMONS: I think we better make
22 this a deposition exhibit. Off the record.

23 (Whereupon, there was a discussion off
24 the record.)

25 EXAMINATION

1 BY MR. EMMONS:

2 Q. Let's go back on the record. While we
3 were off the record by agreement of all counsel and
4 the witness, the witness has made some, in his own
5 handwriting, some markings that identify the
6 drawings that he has made on the antenna sketch
7 page of page twenty-two of deposition exhibit
8 seven.

9 That one page is now going to be made
10 deposition exhibit eight, and, as I say what I am
11 about to say, the witness will follow with me and
12 confirm that I am correct.

13 In his own handwriting he has written
14 the words, FM antennas, followed by parentheses,
15 truck radios, close parentheses, and from that
16 drawn an arrow to his depiction of an antenna at
17 the top of the building.

18 And, likewise, in his own handwriting
19 he has written the word, quote, railing, close
20 quote, and drawn an arrow from there to his
21 depiction on the sketch of the location of a
22 railing to which he has testified.

23 Mr. Rick, is that a correct
24 characterization of what you have done?

25 A. Yes, sir. It is, sir.

1 MR. EMMONS: And we will make that Rick
2 deposition exhibit eight.

3 (Whereupon, the Court Reporter marked
4 for identification as Deposition Exhibit Rick
5 eight, a diagram.)

6 (Whereupon, at or about 4:30 p.m., the
7 deposition was concluded.)

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that I was present upon the hearing of the above-entitled matter and there reported stenographically the proceedings had and the testimony produced; and I further certify that the foregoing is a true and correct transcript of my said stenographic notes.

Alfred W. Kershaw

ALFRED W. KERSHAW, RPR

Official Court Reporter